

REMARKS

Claims 1-21 were pending at the time of the transmission of the outstanding Office Action. By this amendment, claim 7 has been cancelled without prejudice or disclaimer as to the subject matter contained therein. Claim 1 has been amended. New claims 22-26 have been added.

In the Office Action of 6 June 2007, the Examiner rejected claim 1 under 35 U.S.C. § 112, second paragraph, as being indefinite for failure to point out and distinctly claim the subject matter of the invention. Under 35 U.S.C. § 102(b), the Examiner rejected claims 1-6 and 8-10 as anticipated by Dal Molin et al. (US Pat. 6,556,866) (hereinafter "Molin"). Under 35 U.S.C. § 103(a), the Examiner rejected claims 11-21 as being unpatentable over Molin. Claim 7 was objected to as being dependent on a rejected base claim but being allowable if re-written in independent form including all the limitations of the base claim and any intervening claim.

The Examiner rejected claim 1 under 35 U.S.C. § 112, second paragraph. The Examiner maintains that the phrases "the intercardiac impedance" in line 10 and "the univentricular or biventricular stimulation mode" in line 14 lack proper antecedent basis. Claim 1 has been amended to provide proper antecedent basis for the first limitation and to eliminate the second. Withdrawal of the rejection under 35 U.S.C. § 112, second paragraph is respectfully requested.

Claim 1 has been also amended to include all the limitations of original claim 7, which previously depended directly from claim 1 and has now been cancelled. Therefore, the Applicants maintain that claim 1, as amended, patentably distinguishes from Molin. Likewise, claims 2-6 and 8-21, which depend from claim 1 either directly or indirectly, and thereby include all the limitations of claim 1, also patentably distinguish over Molin. Withdrawal of the rejections under 35 U.S.C. §§ 102(b) and 103(a) is respectfully requested.

New claims 22-26 have been added. Claim 22 recites a cardiac pacemaker having a control unit that is adapted to derive an interventricular delay time in dependence on the maximum value of the impedance during a cardiac cycle or the intracardiac impedance averaged over a plurality of

cardiac cycles, where the cardiac pacemaker is a rate-adaptive cardiac pacemaker in which a stimulation rate is set on the basis of an evaluation of the intracardiac impedance, in such a way that the difference between the maximum detected impedance and the minimum detected impedance is maximized. Support for new claims 22-24 may be found in original claims 1 and 21, as well as paragraphs 0026-0027 and 0047 and Fig. 3. Support for new claims 25 and 26 may be found in original claims 5 and 14, respectively. The Applicant maintains that Molin does not teach or suggest a rate adaptive pacemaker in which the stimulation rate is set to maximize the difference between the maximum detected impedance and the minimum detected impedance ($Z_{ES} - Z_{min}$) as recited in claim 22. Therefore claim 22, and claims 23-26 which depend from and include all the limitations of claim 22, patentably distinguish over Molin.

The Applicant submits that the claims are in a condition to permit allowance and therefore requests the issuance of a Notice of Allowance. The Commissioner is authorized to charge any fees that are due with the filing of this paper, or to refund any excess fees charged, to Account Number 15-0450.

Respectfully submitted,

/John J. Cunniff/

John J. Cunniff
Reg. No. 42,451

Hahn Loeser & Parks LLP
One GOJO Plaza, Suite 300
Akron, OH 44311-1076
330-864-5550
Fax 330-864-7986
jcunniff@hahnlaw.com

Attorney for Applicant